

City of Bainbridge Island Ethics Board

RE: COMP-2013-1

March 18, 2013

To Tom Golan:

This responds to your Ethics Complaint filed with the City Clerk on March 12, 2013. The complaint alleges that Councilmember Debbi Lester "is compromised on her voting" on the status of waterfront properties because she is married to a local land use attorney, and that she "is incapable of voting against the City of Bainbridge Island's Planning Department" because of her husband's prior legal work for the city and his alleged "need to be in the Planning Department's good graces to further his career." Your complaint states that Councilmember Lester should recuse herself from voting on a matter in which the Planning Department is involved.

The Ethics Board is charged with reviewing complaints alleging violations of the Code of Ethics by elected officials. Although it is styled as an Ethics Complaint, your submission does not allege that a violation of the Code of Ethics has occurred. Instead, it makes more general allegations that a Councilmember is "compromised" and "incapable" of voting. Although there may be elements of a conflict of interest in your allegations, you have not alleged a violation. Indeed, a necessary element of a violation - the occurrence of the behavior in question - is not alleged.

The Ethics Board is not authorized to review a complaint of a potential violation. If the Board were to consider your allegations, Councilmember Lester would have the burden of defending in the abstract a behavior that has not occurred. Further, you have requested a remedy - recusal - that is not within the authority of the Board to order.

Although styled as a complaint, your submission is more accurately characterized as a request for an advisory opinion as to whether certain behavior of Councilmember Lester in the future might violate the Code of Ethics. The Ethics Board is authorized to respond to such a request only if it is made by an individual with respect to his or her own behavior. This limitation avoids the problem of issuing an advisory opinion about an official's future actions based solely on someone else's description and characterization of those actions. It is an important limitation especially with regard to actions that have not yet occurred.

The Ethics Board notes that the status of waterfront properties now under consideration by the City Council has raised much concern in the community. The proposed legislation may affect some land owners in different ways than others. To the extent that individual members of the

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Council could be affected, the Ethics Code provides that this is a matter for discussion by the Council itself.

Susan Buckles, Chair

For the COBI Ethics Board